IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7096 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

KISHORBHAI R JOSHI - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,,
BALKRISHNA ACHARYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/09/2005

ORAL JUDGMENT

In the present petition, the petitioner, Gujarat State Road Transport Corporation, has challenged the legality of the order dated 12th February 2004 passed by the Industrial Tribunal, Ahmedabad. By the said impugned

order, the Industrial Tribunal was pleased to reject Approval Application No.122/02 filed by the petitioner seeking approval from the Industrial Tribunal of the order of dismissal passed against the respondent-workman.

2. For some alleged misconduct, an order dated 29th October 2002 came to be passed against respondent. On account of pending reference (IT) No.37/2000, the petitioner was required to obtain approval of its action. It is stated that calculation regarding notice pay was not done immediately, the order of dismissal therefore was not given effect. The workman was actually allowed to discharge his duties upto 11.11.2002 on which date, he was relieved from duty. Simultaneously, approval application also came to be filed on the very same day before the Industrial Tribunal. In the meantime, pay for the period of one month in lieu of notice was also given to the respondent.

3. The Industrial Tribunal rejected the approval application of the petitioner only on the short ground that when the dismissal order was passed on 29th October 2002, the approval application was not filed and it was

filed on 11th November 2002 and was not simultaneous and therefore the same is incompetent. It may be noted that before the Industrial Tribunal, the workman admitted the legality of the departmental inquiry. In view of its conclusion that the approval application was not maintainable, the Industrial Tribunal did not go into the question whether there was prima facie case against the respondent-workman.

4. From the available material on record, it can be seen that though the dismissal order was passed on 29th October 2002, the same was not acted upon till 11th November 2002. The workman actually discharged his duties and he continued to be the workman of the petitioner-Corporation till 11.11.02. When the dismissal was made effective by relieving the workman, he was already paid one month's notice pay and simultaneously, approval application was also filed before the Industrial Tribunal. In that view of the matter, I find that the petitioner had complied with the requirements of the provisions of section 33(2)(b) of the Industrial Disputes Act. The Industrial Tribunal erred in rejecting the approval application solely on the ground that the approval application was filed a few days after passing

of the dismissal order. The impugned order is therefore required to be and is hereby quashed and set aside.

5. As noted earlier, the workman had not disputed the legality of the inquiry conducted by the employer. The question, however, still remains is with respect to the prima facie nature of proof collected against the respondent and the conclusion of the employer in this regard. As noted earlier, the Industrial Tribunal did not examine this aspect of the matter in view of its conclusion that the approval application itself is not competent. In that view of the matter, while allowing this petition and setting aside the order passed by the Industrial Tribunal, the proceedings arising out of Approval Application No.122/02 in Reference (IT) No.37/2000 filed by the petitioner are remanded for the limited purpose of examining the prima facie nature of the conclusions arrived at by the employer during the course of inquiry and to decide the approval application on merits. Such exercise may be endeavoured to be completed as far as possible within a period of four months from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)